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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	:	
	:	
Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation (Seventh Notice of Proposed Rulemaking)	:	**MM Docket No. 92-266**

To: The Commission

REPLY COMMENTS OF USA NETWORKS TO SEVENTH NOTICE OF PROPOSED RULEMAKING

As the operator of an established and extremely popular programming cable network (USA Network) as well as a fledgling service (the Sci-Fi Channel) USA Networks has a vital interest in the proposal under consideration in this proceeding to rescind the 7.5 percent markup on external programming costs for established services. We submit these reply comments to briefly emphasize why this proposal should not be adopted.

The Seventh Notice of Proposed Rulemaking directly links the changes that the Commission has made to its going-forward rules in application to new and fledgling services to the re-opening of the question whether the 7.5 percent markup applicable to existing services is no longer necessary.[1/] This is misguided. The

1/ Seventh Notice of Proposed Rulemaking at ¶ 133

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Commission changed its going-forward rule to authorize the 20 cent markup and create the NPT for new services because of the reality that new services simply were not being added to cable systems and that, therefore, the 7.5 percent markup provided cable operators with an inadequate incentive to increase the choice of programming services they make available to their subscribers.

The need for a markup on pass-throughs in application to existing services is a very different one. As the Commission is well aware, program license fees charged by cable networks are a critically important part of the revenue stream that existing networks use to improve the quality and diversity of the programming they offer. If cable networks are directly or indirectly constrained in their ability to increase the per subscriber fees they charge to cable operators, competition among cable networks will diminish and the economic well being of the program production and acquisition industries will be curtailed. The purpose of the markup above external cost in application to existing services is to enable cable operators to base their decisions with respect to license fee increases upon the quality of the programming that a particular cable network offers and the demand for it among the operators' subscribers. Thus, the commendable steps the Commission has taken to address the problem of new services provides absolutely no justification for repeal of the 7.5 percent markup in application to existing services.

Nor is there any economically rational basis for concluding, as the Seventh Notice suggests, that the 7.5 percent markup is "unnecessary." The necessity for the markup lies in its very purpose--to assure the continued and increasing availability to cable subscribers of high quality programming, responsive to their needs and tastes.

Neither the original surveys that led to the development of the benchmark and full reduction rates nor the special survey that the Commission itself undertook to develop the new services markup rules provide any information supporting a conclusion that cable systems subject to effective competition do not markup license fee increases on existing services.

Indeed, if there is any inference to be drawn from the data compiled by the Commission to develop the new services going-forward rules, it is that systems subject to effective competition most emphatically do markup external program cost increases on existing services and do so by margins which are probably greater than the 7.5 percent allowed under the existing rules. Thus, the concern that preservation of the 7.5 percent markup in application to existing services will create an "artificial incentive" for the cable operators to carry program services they "would not otherwise continue to offer"[2/] is completely without factual foundation. The more rational conclusion is that repeal of the 7.5 percent markup will artificially interfere with the ability of systems subject to rate regulation to base their decisions with respect to license fee increases and continued carriage of existing services on market response as expressed through consumer demand and preferences.

[2/] NPRM at ¶ 133.

Accordingly, there is no valid reason for the Commission to repeal the 7.5 percent markup in application to existing services. If anything, the Commission should give consideration to increasing that markup.

Respectfully submitted,

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